

APPENDIX

APPENDIX

1. The Text of § 205 of Public Law 92-225

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SEC. 205. Section 610 of title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended, by adding at the end thereof the following paragraph:

“As used in this section, the phrase ‘contribution or expenditure’ shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.”

2. Representative Hansen's Preliminary Explanation of His Amendment to 18 U.S.C. § 610

HANSEN AMENDMENT TO ELECTORAL REFORM BILL

(Mr. HANSEN of Idaho asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HANSEN of Idaho. Mr. Speaker, at the proper time during tomorrow's consideration of the various Federal election reform proposals, I intend to offer the following amendment. It deals with the use of union treasury funds during political campaigns, an area of abuse that is neglected by the otherwise excellent bill approved by the Senate last August and introduced in the House by Congressmen FRENZEL and BROWN.

Mr. Speaker, the language of the current statutory provision governing the use of corporation and union moneys in behalf of campaigns for elective office is quite vague and has prompted a number of Supreme Court rulings designed to specify its concrete application. These opinions provide that unions may use treasury money to inform their members about the views and positions of candidates, and to support voter registration drives and get-out-the-vote activities aimed at union members and their families. By contrast, the Court's rulings explicitly prohibit the use of union treasury funds for these purposes if they are directed at the general public.

Mr. Speaker, the purpose of my amendment is to clarify and codify these rulings in statutory form. We all know that the privilege granted by the court to unions to use treasury funds for activities directed at their members and families has been abused and must be stopped if our election financing process is to be cleaned up and if it is to retain the confidence of the American public. My amendment, I believe, will accomplish this end in a way that is

fair to all parties concerned. I include it at this point in the RECORD:

Amendment Offered by Mr. Hansen of Idaho to the Amendment in the Form of a Substitute Introduced by Mr. Frenzel and Brown of Ohio (H.R. 11280)

Page 18, line 20, renumber Section 205 as Section 206 and insert in lieu thereof a new Section 205 to read as follows:

Section 610 of Title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended by adding at the end thereof the following new paragraph:

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit or gift of money or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization; provided, that it shall be unlawful for such a fund to make a 'contribution or expenditure' by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees or other monies required as a condition of membership in a

labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

(117 Cong. Rec. H. 11232 (Daily Ed., Nov. 17, 1971))

3. Representative Hansen's Explanation of His Amendment To 18 U.S.C. § 610 Delivered at the Time It Was Debated and Voted Upon in the House of Representatives

Mr. HANSEN of Idaho. Mr, Chairman, the purpose of my amendment is to codify the court decisions interpreting section 610 of title 18 of the United States Code, and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election.

The text of the amendment may be found in the CONGRESSIONAL RECORD for Wednesday, November 17, 1971, at page H11232.

Section 610 of title 18, United States Code, prohibits the making of a contribution or expenditure in connection with certain elections by a corporation or a labor union. The first part of my amendment reinforces that prohibition and defines the phrase "contribution or expenditure" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."

The effect of this language is to carry out the basic intent of section 610, which is to prohibit the use of union or corporate funds for active electioneering directed at the general public on behalf of a candidate in a Federal election. This part of my amendment is identical to the first part of section 8 of H.R. 11060.

Next, the amendment, in further defining the phrase "contribution or expenditure," draws a distinction between activities directed at the general public, which are prohibited, and communications by a corporation to its stock-

holders and their families, and by a labor organization to its members and their families, on any subject, which the courts have held is permitted.

The amendment sets forth the limited circumstances where such communications are permitted in connection with an election. These include:

(1) non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families.

(2) the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.

This fund must be separate from any union or corporate funds, and contributions must be voluntary. To insure that contributions are voluntary, the amendment prohibits the use by the separate political fund of any money or anything of value obtained by the use or threat of force, job discrimination, or financial reprisal, or by dues or fees, or other monies required as a condition of employment or membership in a labor organization, or by moneys obtained in any commercial transaction.

The net effect of the amendment, therefore, is to tighten and clarify the provisions of section 610 of title 18, United States Code, and to codify the case law. It spells out more clearly the rules governing election activities that apply equally to labor unions and corporations. While prohibiting abuses that involve activities directed at the general public, the amendment recognizes that the constitutional guarantee of free speech protects the right of labor organizations and corporations to communicate with their own members or stockholders.

Section 610 of title 18 of the United States Code makes it a criminal offense for a corporation or labor union to make a contribution or expenditure in connection with any

Federal election. The legislative history of section 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the responsibility for enforcing the statute, has stated, shows instead that the purpose of section 610 is simply to insure that—

When a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used" (Brief for the United States in U.S. v. UAW, 352 U.S. 567).

Corporate and labor political communications directed at members and stockholders, nonpartisan registration and get out the vote activities, and partisan electioneering directed at the general public financed by voluntary contributions, are all lawful.

While these rules are well known to students of this area of the law the exact scope of section 610 is a matter of some mystery to the uninitiated. This stems from the fact that the cryptic statutory language is of little help and a full understanding of the provision's meaning requires a diligent study of the court cases and the legislative history. The result has been an undesirable confusion as to what section 610 actually provides. And this has led to numerous charges that the law is defective, or that it is not being observed. Many of these charges stem from a lack of appreciation of what section 610 actually provides. Others indicate that there may well be instances in which corporations and unions seek to utilize the complex interrelationship between the statutory language and the gloss which had been put on that language as a cover to obscure the fact that they are acting unlawfully. In either event the public confidence in the regulation of Federal election financing suffers.

Despite this lingering confusion it has been 24 years since Congress last legislated in this field. Section 8 of H.R. 11060, the so-called Crane amendment to the Hays' bill, attempts to break this legislative logjam by adding a new final paragraph to section 610 defining the critical phrase "contribution and expenditure" as used therein.

Unfortunately, as often happens in dealing with a complex subject, the Crane amendment's definition tends to make the problem worse rather than solving it. For section 8 of H.R. 11060 can either be read as prohibiting all union or corporate activity financed by treasury money that touches Federal elections in any way, or as continuing the limited permissions the 1947 Congress extended to corporations and unions with one exception—"get out the vote activities" which are presently permissible but which would be prohibited. In the name of providing legislative clarification it creates new confusion. The result is certain to be fresh uncertainty and a new round of litigation.

While its execution is faulty the idea behind section 8 of H.R. 11060 is sound. Congress should set out in a clear statutory form precisely what corporations and unions can and cannot do in the election area. And it is plainly proper to do so during the consideration of this overall attempt to modernize campaign regulation. But since section 8 does not in fact accomplish that goal I hereby offer my amendment, the aim of which is to perfect section 8, and by so doing to clarify the exact scope of section 610.

Section 610 strikes a balance between organizational rights and the rights of those who wish to retain their shareholding interest or membership status but who disagree with the majority's political views. The balance presently obtaining provides, in my judgment, an optimum solution to the complex problem of accommodating these conflicting interests. This solution is sound in theory as I shall show, has proved workable in practice, and has gen-

erated a broad bipartisan consensus in favor of continuation of the present rules. For this reason my amendment, with one exception, follows the present law.

Analytically the proposal I offer has three component parts. Before turning to them, two preliminary points should be noted for the sake of completeness. At present section 610 does not, and under either this amendment or section 8 of H.R. 11060 it would not, cover corporate or union legislative activities. Lobbying is a separate field which has traditionally been, and should continue to be, regulated separately. Indeed, while section 610 discourages corporate political action, the Internal Revenue Code, through the deductions allowed, encourages lobbying. In addition, at present section 610 does not, and under either this amendment or section 8 of H.R. 11060 would not, regulate corporate or union political activity in connection with State elections even though such activity, by reason of such factors as the party system and the simultaneous running of Federal and State elections, may have some residual overlapping effect. For the power of the States to regulate their own elections is essential to a healthy Federal system.

With these preliminaries to the side the first section of my amendment spells out in detail the point that corporations and unions may not use their treasury money—that is, the money a corporation secures from commercial transactions or a union secures from dues, initiation fees and similar exactions—either directly or indirectly to make any type of “contribution or expenditure in connection with any federal election.” This prohibitory language follows that of section 8 of H.R. 11060 word for word and it is plainly all-encompassing. That is as it should be. For as I noted at the outset the basic purpose of section 610 is to prohibit active electioneering by corporations and unions for Federal candidates directed at the public at large. There can be no doubt that this language accomplishes that end.

Before going further, and to insure that the accepted not be confused with the necessary, it should be noted that this prohibition is the most far-reaching in the entire election law. While the regulation of corporate and union political contributions is based on a fear of the effects of aggregated wealth on politics these organizations are not the sole repositories of funds adequate to finance big money contributions. Yet Congress has never regulated the activities of legal, medical, or farm organizations, for example, nor has it placed comparable stringent limitations on wealthy individuals. Indeed, if any of the proposals presently under consideration by this body become law, only corporations, unions and political candidates will be limited in the making of political contributions and expenditures.

Thus, section 610 as it stands, and under my proposal, represents a complete victory for those who believe that corporations and unions have no moral right to utilize their organizations' general funds for active public partisan politicking. It totally subordinates organizational interests to individual interests.

Recognizing that group interests must be given some play and that the interest of the minority is weakest when corporations and unions confine their activities to their own stockholders and members, the beneficial owners of these organizations, the second subdivision of the amendment sets out three precisely defined and limited permissions for corporate and union activity related to the political process.

The courts, as well as other independent students of section 610 and its legislative history, have concluded that the 1947 Congress did not intend to prohibit corporations or unions from communicating freely with their members and stockholders—see *U.S. v. CIO*, 335 U.S. 106—from conducting nonpartisan registration and get out the vote campaigns, or from securing voluntary contributions made directly to the support of a labor—or management—political

organization—93 CONGRESSIONAL RECORD 6440, remarks of Senator Taft.

Today, as 24 years ago, there is a broad consensus that these limited permissions are proper. For example, Senator DOMINICK speaking on the floor of the other body on behalf of an amendment to section 610 he had proposed, stated:

If a member wishes to pay money voluntarily to a candidate or to a labor organization fund for a candidate or even to a fund which the union will determine how it is to be spend, I have no objections . . . A labor organization should be able to expend its funds on behalf of . . . nonpartisan political activity such as voter registration or voter education on campaign issues . . . (and) endorsing a particular candidate in its normal union publications. This, I believe, is a legitimate exercise of free speech, 117 Cong. Rec. S. 13153 (Aug. 4, 1971).

The compelling policy considerations supporting this consensus can be very succinctly stated.

First, every organization should be allowed to take the steps necessary for its growth and survival. There is, of course, no need to belabor the point that Government policies profoundly affect both business and labor. One need turn no further than the present economic stabilization program for a compelling illustration of the extent to which Federal policy is the critical detriment of corporate and union health. If an organization, whether it be the NAM, the AMA or the AFL-CIO, believes that certain candidates pose a threat to its well-being or the well-being of its members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect

this expert guidance. In determining where their self-interest lies they have no other comparable source of information. Indeed, as the Supreme Court stated in the CIO case, if Congress were to prohibit communications between an organization and its members concerning "danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality."

Second, it has also been recognized that it is proper to allow corporations and unions to conduct nonpartisan registration and get out the vote campaigns. Indeed, any other conclusion would have been contrary to the basic precept that the exercise of the franchise is not merely a political right but a civic duty. The health of our representative form of government requires that every possible step be taken to maximize the number of eligible voters who go to the polls. Attempts to restrict the number who vote are inimical to the democratic precepts upon which the political process rests.

Of course, such campaigns must be nonpartisan. Within the constraints set by an organization's resources which may require it to concentrate on particular areas where its members are most numerous or where a race of particular importance is to be held, it must make an effort to reach all those in the area and not merely those who will vote in a certain way. A failure to respect this limitation would, of course, be a violation of section 610.

It is not entirely clear to me, even after substantial study, as to whether the present law requires such campaigns to be limited to members and stockholders. It is my judgment that they should be, and the amendment I propose insures that such a limitation would have to be observed. The dividing line established by section 610 is between political activity directed at the general public in connection with

Federal elections which must be financed out of political donations and activities directed at members or stockholders which may be financed by general funds. As a matter of principle this line of demarcation supports the proposed limitation and there is no consideration of which I am aware that requires an exception to the basic guiding theory of this provision.

Finally, there can be no doubt that union members or stockholders should have the right to set up special political action funds supported by voluntary donations from which political "contributions and expenditures" can lawfully be made. As Senator Taft stated in his floor explanation of section 610:

If [union members or stockholders] are asked to contribute directly . . . to the support of a labor [or management] political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders. 93 Cong. Rec. 6440

For the underlying theory of section 610 is that substantial general purpose treasuries should not be diverted to political purposes, both because of the effect on the political process of such aggregated wealth and out of concern for the dissenting member or stockholder. Obviously, neither of these considerations cuts against allowing voluntary political funds. For no one who objects to the organization's politics has to lend his support, and the money collected is that intended by those who contribute to be used for political purposes and not money diverted from another source.

The essential prerequisite for the validity of such political funds is that the contributions to them be voluntary. For that reason the final section of this amendment makes it a violation of section 610 to use physical force, job discrimination, financial reprisals or the threat thereof, in seeking contributions. This is intended to insure that a solicitor for COPE or BIPAC cannot abuse his organizational authority in seeking political contributions. Of course, nothing can completely erase some residual effects on this score, any more than the law can control the mental reaction of a businessman asked for a contribution by an individual who happens to be his banker, or of a farmer approached by the head of his local farm organization. The proper approach, and the one adopted here, is to provide the strong assurance that a refusal to contribute will not lead to reprisals and to leave the rest to the independence and good sense of each individual.

As a further safeguard the proviso also makes it a violation for such a fund to make a contribution or expenditure from money collected as dues or other fees required as a condition of membership or employment or obtained through commercial transactions. This insures that any money, service, or tangible item—such as a typewriter, Xerox machine, and so forth—provided to a candidate by such a fund must be financed by the voluntary political donations it has collected.

At the present time there is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates and a limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject, to attempt to convince members and stockholders to register and vote, and to make political con-

tributions and expenditures financed by voluntary donations which have been kept in a separate segregated fund. This amendment writes that balance into clear and unequivocal statutory language.

(117 Cong. Rec. H. 11477-11479 (Daily Ed., Nov. 30, 1971)¹

4. The Conference Committee Report's Explanation of § 205 of Public Law 92-225

CRIMINAL CODE AMENDMENTS

**CONTRIBUTIONS OR EXPENDITURES BY
NATIONAL BANKS, CORPORATIONS, OR
LABOR ORGANIZATIONS**

**AMENDMENT TO SECTION 610 OF TITLE 18,
UNITED STATES CODE**

Senate bill.— No comparable provision.

House amendment.— Section 305 of the House amendment amended section 610 of title 18 of the United States Code, relating to contributions or expenditures by national banks, corporations or labor organizations, to add a new paragraph defining the phrase "contribution or expenditure" to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in such section. In the case of a contribution or expenditure by a national bank, or by a corporation organized by authority of any law of Congress, section 610 refers to "any political office". In the case of a contribution or expenditure by any corporation whatever, or by any labor organization, section 610 refers to the offices of presidential and vice presidential electors; Senator; and Representative in, or Delegate or Resident Commissioner to, the Congress.

¹ The debate following Representative Hansen's explanation of his amendment, which led to its adoption by a teller vote of 233 to 147, is set out at 177 Cong Rec. 11479-11489 (Daily Ed., Nov. 30, 1971).

The House amendment specifically provided that the "contribution or expenditure" did not include—

(1) communications by a corporation to its stockholders and their families or by a labor organization to its members and their families;

(2) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or by a labor organization aimed at its members and their families;

(3) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.

The House amendment further provided that it would be unlawful for any such separate segregated fund to make a contribution or expenditure—

(A) by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat thereof; or

(B) by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment; or

(C) monies obtained in any commercial transaction.

Conference substitute.—The conference substitute is identical with the House amendment except that the phrase "contribution or expenditure" does not include a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

(*Senate Report 92-580, 92nd Cong. 1st Sess, pp. 30-31*)

3. Representative Hansen's Additional Explanation of His Amendment to 18 U.S.C. § 610 Delivered During the Floor Debate on the Conference Committee Report

Mr. HANSEN of Idaho. Mr. Speaker, I take this time because questions have recently been raised as to the purpose and effect of the so-called Hansen amendment to the

election reform bill. This amendment was adopted by the House of Representatives by a margin of 233 to 147 and was retained by the joint Senate-House conference committee.

At the outset, I would like to make two points. First, I stand fully behind every word of the statement I made in explanation of my amendment and in answer to questions during the course of the debate on the amendment. Second, I will repeat what I stated several times during the course of the debate that the purpose and effect of my amendment is to codify and clarify the existing law and not to make any substantive changes in the law.

It is significant that I gave notice to the House and to the public of my intention to introduce my amendment approximately 2 weeks before it was considered on the floor of the House. On November 17, 1971, I inserted the full text of the proposed amendment and an explanation in the CONGRESSIONAL RECORD on page H11232. The amendment was offered and debated on November 30, 1971. Prior to the time of the debate no question was raised by anyone in the Justice Department or by anyone else to my knowledge concerning the provisions of the amendment that have recently been questioned. Those provisions relating to the legality of a separate, segregated voluntary political fund were not raised during the course of the debate. In fact, most of the attention during the debate was centered on the feature of the bill which represented the principal difference between the Hansen amendment and the so-called Crane amendment; that is, the extent to which union or corporate funds could be used to finance a get-out-the-vote drive directed at the union members or the corporate stockholders.

Mr. HAYS. Mr. Speaker, will the gentleman yield?

Mr. HANSEN of Idaho. I yield briefly to the gentleman from Ohio, but I would like to complete my statement.

Mr. HAYS. I will say to the gentleman that what he is saying will be the legitimate legislative history and that what somebody down in the Department of Justice, some Assistant Attorney General's opinion, is worth exactly as much as the piece of paper it is printed on, no more and no less.

Mr. HANSEN of Idaho. I thank the gentleman.

Mr. DENNIS. Mr. Speaker, will the gentleman yield?

Mr. HANSEN of Idaho. I shall yield to the gentleman when I complete my statement.

I can certainly understand why the questions now being raised were not raised prior to or during the course of the debate on the amendment. The Hansen amendment is consistent with the legislative intent expressed by the original author of section 610, the late Senator Robert Taft of Ohio. The Hansen amendment is consistent with the position taken by the Justice Department in the brief it filed with the U.S. Supreme Court in the Pipefitter case and with the position taken by the Justice Department when the case of United States against UAW was before the Supreme Court. The Hansen amendment is also consistent with the provisions of the so-called Crane amendment dealing with the legality of a separate, voluntary political fund. The pertinent portions of both amendments are as follows:

HANSEN AMENDMENT

"As used in this section, the phrase 'contribution or expenditure' . . . shall not include . . . the *establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes* by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by

dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction." (Emphasis supplied.)

CRANE AMENDMENT

(Sec. 8 of H.R. 11060)

Nothing in this section shall preclude an organization from *establishing and administering a separate contributory fund for any political purpose*, including voter registration or get-out-the-vote drives, if all contributions, gifts, or payments to such fund are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of membership in such organization or as a condition of employment. (Emphasis supplied)

It has been suggested recently that the so-called Hansen amendment to the present 18 U.S.C. section 610 has the purpose and effect of thwarting present prosecutions against the Pipefitters Local 562 and the Seafarers International Union as well as a contemplated prosecution against the Marine Engineers Beneficial Association. As I will show, this contention is completely without substance.

In its original draft form, the Hansen amendment made it unlawful for a labor political committee to make a contribution or expenditure by utilizing money secured by physical force or job discrimination or threat thereof. Subsequently, when the allegation was made that the Marine Engineers Beneficial Association had coerced contributions to its political action fund by threatening pension cutoffs or reductions, the amendment was redrafted and broadened in order to make the use of financial reprisals or threats thereof unlawful. Therefore, far from undercutting any action the Department of Justice may see fit to take in this case, if action is warranted, the Hansen amendment actually strengthens the Department's hand.

Again, in the Seafarers' case, the Government's contention insofar as it can be gleaned from the indictment and

from the newspaper stories which led to the indictment, is that section 610 was violated because the payments were coerced through job discrimination and threats of job discrimination. That precise evil is also covered and prohibited in explicit terms in the Hansen amendment.

With respect to the Pipefitters' case, the thrust of the prosecutions there, as is evident from the Government's briefs, is that section 610 was violated because the Pipefitters' Political Action Fund utilized assessments whose payment was required as a condition of employment. That precise evil is covered in explicit terms in the Hansen amendment.

The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70-74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971. In that brief Government states:

The essential charge of the indictment and the theory on which the case was tried was that the Fund, although formally set up as an entity independent of Local 562, was in fact a union fund, controlled by the union, *contributions to which were assessed by the union as part of its dues structure*, collected from non-members in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund. (Brief for the United States at p. 23, emphasis added.)

The Hansen amendment makes it perfectly plain that Federal contributions or expenditures financed by "dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment" are unlawful. Thus, under the Hansen amendment the Government would be entitled to a guilty verdict whenever it meets the burden of proving to a properly in-

structed jury that contributions were made from assessments which were part of a union's dues structure.

There could be no dispute on this point for in his floor explanation of the 18 U.S.C. section 610 Senator Taft emphasized that:

[U]nions can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for [the] purpose [of making federal political expenditures and contributions]. 93 Congressional Record 6440.

In light of this explanation the Government advised the Supreme Court in *United States v. UAW*, 352 U.S. 567, that section 610 "had not silenced the political voice of labor unions" since unions may "properly" use "special funds contributed voluntarily by the membership" for "purely political activities." Brief for the United States in the UAW case at pages 37 and 38. And, consistent with that view, despite the fact that unions, as well as the Chamber of Commerce and the NAM, have openly and notoriously carried on political activities through labor and business political organizations such as AFL-CIO, COPE, and BIPAC for almost 30 years, the Government has never prosecuted either a union or a corporate group on the theory that unions and corporations have no right to set up and run legitimate labor or corporate political organizations such as COPE and BIPAC.

Thus as Senator DOMINICK stated, speaking in support of an amendment to section 610 he offered to the other body, the general view is that:

If a member wishes to pay money voluntarily to a candidate or to a labor organization fund for a candidate, or even to a fund which the union will determine how it is to be spent, I have no objections.

117 Congressional Record, S. 1353 August 4, 1971.

The Hansen amendment building on this consensus tracks this language with a single addition making explicit what is implicit in the Crane amendment—that unions and corporations may solicit contributions to these funds as long as they do so without attempting to secure money through “physical force, job discrimination, financial reprisals” or the threat thereof. Thus the Hansen amendment does not break new ground, it merely writes currently accepted practices into clear and explicit statutory language. . . .

(118 Cong. Rec. H94-95 (Daily Ed., Jan. 19, 1972))

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Supreme Court, U.S.

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E. ROBERT SEAVER, CLERK

No. 70-74

In the Supreme Court of the United States

OCTOBER TERM, 1971

PIPEFITTERS LOCAL UNION No. 562, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

**ON PETITIONERS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
MEMORANDUM AFTER ARGUMENT AND PETITIONERS' SUPPLE-
MENTAL MEMORANDUM**

MEMORANDUM FOR UNITED STATES

ERWIN N. GRISWOLD,

Solicitor General,

Department of Justice,

Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

**ON PETITIONERS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
MEMORANDUM AFTER ARGUMENT AND PETITIONERS' SUPPLE-
MENTAL MEMORANDUM**

MEMORANDUM FOR UNITED STATES

The United States neither opposes nor concurs in petitioners' motion for leave to file a supplemental memorandum after argument in this case. As stated in our letter to the Clerk of February 14, 1972, informing the Court of the recent amendment to 18 U.S.C. 610, our position is that the present case is governed by Section 610 as it existed during the acts of the defendants, and their trial and conviction. See 1 U.S.C. 109.

Moreover, this view is affirmed by the specific discussion of the present case in the course of the amendment's consideration by the House of Representatives

(1)

set forth at pp. 18a-20a of the Appendix to Petitioners' Supplemental Memorandum. Indeed, Representative Hansen, the sponsor of the amendment, stated on the floor of the House (*id.* at 19a):

The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70-74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971.

He then quoted a passage from the government's brief (*ibid.*).

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

